

*Original*

OCT 8 1986

Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C. 20036

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In the Matter of  
1984 Cable Royalty  
Distribution Proceeding  
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) CRT Docket No. 85-4-84CD  
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MOTION TO STRIKE AND LIMIT CLAIM

On October 2, 1986, the National Association of Broadcasters (NAB), pursuant to the Tribunal's informal discovery procedures, requested from MPAA documentation related to MPAA's attempt to inflate its Phase II claim from 96.34 percent to 99.37 percent of the syndicated program royalty fund. Specifically, NAB made the following request:

With regard to the table on page 3 of Allen Cooper's testimony, a list of the programs falling into the "Owners, Not Phase 2 Claimants" category (along with the viewing hours and identified owner for each program) and a list of the programs falling into the "Unidentified Programs/Owners" category (along with viewing hours and any identifying information).

MPAA has declined to provide any such information.<sup>1/</sup>

MPAA's refusal to provide responsive information, NAB was told, is predicated on the belief that information on the unclaimed or unidentified programs is irrelevant because MPAA is not claiming royalties for those programs. In fact, MPAA is. As the table and text on page 3 of Allen Cooper's testimony indicate, MPAA is claiming essentially all of the syndicated program fund which it initially attributes to unclaimed or unidentified programs. Without claiming for those programs, MPAA's claim is limited to 96.34 percent of the syndicated program royalties; with those programs MPAA's claim is 99.37 percent.

If MPAA seeks to collect royalties on the basis of programs it thinks are unclaimed and unidentified, so be it. But it cannot do so without providing other parties the opportunity to examine a list of those programs to see if they should properly fall within the valid claim of other parties. MPAA's refusal to provide NAB the requested information is a bald attempt to deny NAB the opportunity to claim programs which NAB might be able to identify as station-produced.

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<sup>1/</sup> MPAA Exhibit 4 is a list of the 5,874 programs MPAA claims to represent. According to Ms. Kessler's testimony (at page 5), there are approximately 6,500 syndicated programs in the 1984 study. This means there are approximately 626 syndicated programs not purportedly represented by MPAA. At a conference with MPAA counsel on October 6, 1986, NAB, in an attempt to make its request as easy as possible for MPAA to comply with, said it would accept, as an alternate to its initial request, a computer generated list of all 6,500 of the syndicated programs in the 1984 Nielsen study. MPAA refused this request as well.

For claimants who do not subscribe to MPAA's view of the world, it is bad enough that MPAA repeatedly seeks to force everyone (including the Tribunal) to accept the universal application of its hand-crafted Nielsen study. For MPAA to seek to force its position on others, and then refuse to provide the information on which it relies to grab virtually all of the funds it attributes to programs it says are unclaimed or unidentifiable, is inexcusable.

In sum, the requested information is clearly relevant. It is the only basis for MPAA's inflation of its claim from 96.34 percent to 99.37 percent of the syndicated program royalty fund. MPAA's refusal to provide that data denies other parties the opportunity to test meaningfully the propriety of that increase because it denies access to information necessary to test the accuracy of its unsupported and unsubstantiated statement that such programs are unclaimed and unidentifiable.

For these reasons, NAB moves to strike (1) the right-hand column and the "Owners, Not Phase 2 Claimants" and "Unidentified Programs/Owners" lines of the table on page 3 of Allen Cooper's testimony; (2) the first sentence after that table on page 3 of Allen Cooper's testimony; and (3) the last sentence of the first paragraph on page 1 of Allen Cooper's testimony. NAB also moves

to limit MPAA's claim to 96.34 percent of the syndicated program royalty fund.<sup>2/</sup>

Respectfully submitted,

NATIONAL ASSOCIATION OF  
BROADCASTERS

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October 8, 1986

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<sup>2/</sup> MPAA's 96.34 percent claim includes royalties for "Little House on the Prairie." MPAA Exhibit 4. If the Tribunal makes a separate award for "Little House," MPAA's 96.34 percent claim must be reduced accordingly. Similarly, if there is an award to Warner Communications, Inc. for music videos, that, too, would require a reduction in MPAA's claim.

CERTIFICATE OF SERVICE

I, Jena Talarico, hereby certify that I have, on this 8th day of October, 1986, caused copies of the attached Motion to Strike and Limit Claim of the National Association of Broadcasters to be mailed, postage prepaid, to the following parties:

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October 8, 1986

BY HAND

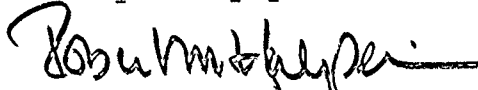
The Honorable Edward W. Ray  
Chairman  
Copyright Royalty Tribunal  
1111 - 20th Street, N.W.  
Washington, D.C. 20036

Dear Chairman Ray:

Transmitted herewith for filing with the Tribunal, on behalf of the National Association of Broadcasters, are an original and five copies of its Motion to Strike and Limit Claim.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Robert M. Halperin

Enclosures